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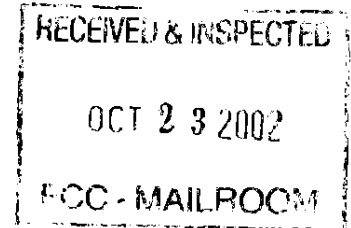
EX-111

Mpower Communications Corp.



175 Sully's Trail, Suite 300
Pittsford, New York 14534
phone: (585) 218-6550
fax: (585) 218.0635

Via Fed-EX
October 21, 2002



Chairman Michael Powell
Federal Communications Commission
9300 East Hampton Drive
Capitol Heights, MD 20743

Re: Ex Parte -- SBC 271 Application for California -- WC 02-306

Dear Chairman Powell:

Mpower Communications Corp. ("Mpower") filed Comments in this docket opposing SBC's application for 271 authority in California, based upon billing system inadequacies, as well as discriminatory pricing for payphone lines in California.

Attached please find the Affidavits of **Mark S** Kazmierski, Mpower's Assistant Corporate Controller, and Scott Sarem, Mpower's National Vice President for Strategic Relations, which provide more detailed and sworn support for the allegations in Mpower's Comments of October 9, 2002.

Sincerely,

A handwritten signature in cursive script that reads "Marilyn H. Ash".

Marilyn H. Ash
Counsel - Legal & Regulatory Affairs

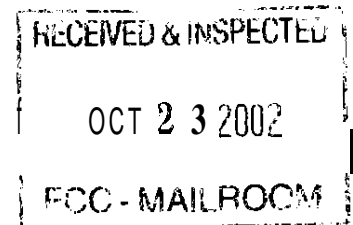
- c. Tracey Wilson, Competition Policy Division
- c. -Christopher Libertelli, Legal Advisor
- c. Dan Gonzalez, Legal Advisor
- c. Jordan Goldstein, Advisor
- c. Matthew Brill, Advisor
- c. Marlene H. Dortch, Secretary (2 copies)



Mpower Communications Corp.

175 Sully's Trail, Suite 300
Pittsford, New York 14534
phone: (585) 210-6550
fax: (585) 218-0635

Via Fed-EX
October 21, 2002



Commissioner Kevin Martin
Federal Communications Commission
9300 East Hampton Drive
Capitol Heights, MD 20743

Re: Ex Parte - SBC 271 Application for California - WC 02-306

~~Dear~~ Commissioner Martin:

Mpower Communications Corp. ("Mpower") tiled Comments in this docket opposing SBC's application for 271 authority in California, based upon billing system inadequacies, as well as discriminatory pricing for payphone lines in California.

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Sincerely,

Marilyn H. Ash
Counsel - Legal & Regulatory Affairs

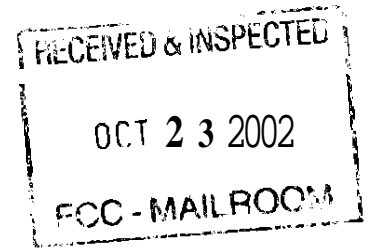
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Mpower Communications Corp.

175 Sully's Trail, Suite 300
Pittsford, New York 14534
phone: (585) 218.6550
fax: (585) 218-0635

Via Fed-EX
October 21, 2002



Commissioner Michael Copps
Federal Communications Commission
9300 East Hampton Drive
Capitol Heights, MD 20743

Re: Ex Parte – SBC 271 Application for California – WC 02-306

Dear Commissioner Copps:

Mpower Communications Corp. ("Mpower") filed Comments in this docket opposing SBC's application for 271 authority in California, based upon billing system inadequacies, as well as discriminatory pricing for payphone lines in California.

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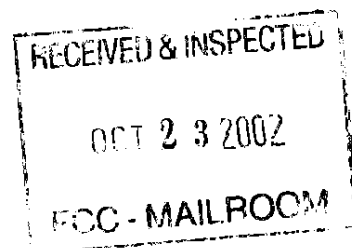
Marilyn H. Ash
Counsel – Legal & Regulatory Affairs

- c. Tracey Wilson, Competition Policy Division
- c. Christopher Libertelli, Legal Advisor
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- c. Jordan Goldstein, Advisor
- c. Matthew Brill, Advisor
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175 Sully's Trail, Suite 300
Pittsford, New York 14534
phone: (585) 218.6550
fax: (585) 218-0635

Via Fed-EX
October 21, 2002



Commissioner Kathleen Abernathy
Federal Communications Commission
9300 East Hampton Drive
Capitol Heights, MD 20743

Re: Ex Parte – SBC 271 Application for California– WC 02-306

Dear Commissioner Abernathy:

Mpower Communications Corp. ("Mpower") filed Comments in this docket opposing SBC's application for 271 authority in California, based upon billing system inadequacies, as well as discriminatory pricing for payphone lines in California.

Attached please find the Affidavits of Mark S. Kazmierski, Mpower's Assistant Corporate Controller, and Scott Sarem, Mpower's National Vice President for Strategic Relations, which provide more detailed and sworn support for the allegations in Mpower's Comments of October 9, 2002.

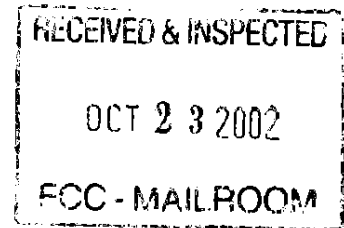
Sincerely,

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Marilyn H. Ash
Counsel – Legal & Regulatory Affairs

- c. Tracey Wilson, Competition Policy Division
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- c. Jordan Goldstein, Advisor
- c. Matthew Brill, Advisor
- c. Marlene H. Dortch, Secretary (2 copies)

**Before the
Federal Communications Commission
Washington, D.C. 20554**



In the Matter of

Application by SBC Communications Inc.,)
Pacific Bell Telephone Company and)
Southwestern Bell Communications Services, Inc.)
for Provision of In-Region, InterLATA Services in)
California)

CC Docket No. 02-306

**AFFIDAVIT OF MARK S. KAZMIERSKI
ON BEHALF OF
MPOWER COMMUNICATIONS CORP'.
ON PACIFIC BELL APPLICATION
FOR 271 AUTHORITY**

I, Mark S. Kazmierski, under oath, hereby state as follows:

1. I am Assistant Corporate Controller for Mpower Communications Corp.
("Mpower") and have worked for Mpower since March 2000. My business
address is 175 Sully's Trail, #300, Pittsford, NY 14534
2. I have 15 years of progressive financial experience, including extensive financial
experience in operations. This includes a thorough understanding of the process
flow of ordering goods and services from receipt of goods, through the receipt and
verification of invoices, to invoice payment. During my 2.5 years at Mpower
much of my focus has been on the identification, acquisition and implementation
of appropriate bill auditing software. My team has audited and processed
approximately \$300 million in ILEC/Carrier bills during my tenure

3. The purpose of this affidavit is to provide a more detailed explanation of the nature and impact of issues outlined in Mpower's Comments, filed with the Federal Communications Commission ("FCC" or "Commission") on October 9, 2002, in opposition to SBC/Pacific Bell's ("PacBell") 271 application for California.
4. Lack of Documentation and Coordination. On each of the issues I will discuss below, a major component of the difficulty relates to the fact that PacBell bills provide inadequate documentation for verification purposes, as well as inadequate identification and coordination of the information provided. For example, PacBell bills Mpower for 100,000 loops in California but it does not identify those loops by CLLI code, which identify the central offices ("CO's") where the loops terminate. This makes it extremely difficult for Mpower to verify the zones in which the loops are located and thus, the appropriate rate.
5. PacBell's billing codes or USOCs are not unique. They are used for circuits in different zones, as well as for different types of circuits. Thus, to verify circuit charges, it is necessary to correlate the USOC description, the zone and the type of circuit to verify the rates. This is particularly inefficient because Mpower bills contain entries for more than 100,000 circuits. The inefficiency is further exacerbated by the fact that the interconnection agreement descriptions do not contain USOCs or billing codes. As a result, one is left trying to compare the differing descriptions provided in the bill and in the interconnection agreement to determine the appropriate unit pricing. Such billing practices make PacBell bills very difficult for the CLEC to audit.

6. Because PacBell billing processes are so inadequate and ineffective, trying to audit PacBell bills is also extremely expensive for the CLEC. For example, Mpower has six people processing wholesale bills. One person regularly spends 65-70% of his time auditing PacBell bills. These resources are inadequate to do the job appropriately given the level of complexity and problems in the bills. Additional resources to further review these bills would be costly and should be unnecessary if PacBell billed more accurately. Further, when big disputes such as the Zone change issue (discussed below) occur, then far more time must be spent to identify, dispute, follow-up and resolve such issues. Mpower has bill verification software which costs \$55,000 per month and expends \$25-30,000 per month for Mpower wholesale bill auditing personnel (not including supervisory personnel and without "loading" for benefits). Thus, Mpower spends approximately \$10,000 a month to attempt to audit PacBell bills and dispute unexplained and erroneous charges.
7. Transfer of Circuits Between Zones. A recent dispute which illustrates the impact of these problems involves the implementation in California of de-averaged loop rates by zone in mid-2002. Prior to the California Public Utilities Commission ("CPUC") decision setting reduced, interim loop rates for PacBell on a de-averaged basis, PacBell bills listed the zone in which each circuit is located. Approximately 95% of Mpower's loops were listed in Zone 1 ; the other 5% were listed in Zone 2. At that time, however, Mpower was charged an averaged rate regardless of Zone. In mid-2002, when de-averaged rates were put into effect and loop charges began to be billed based on Zone, suddenly, with no notice or

supporting documentation, about 25% of the circuits were changed to Zone 2, where loops are substantially more expensive.

8. Based on an internal study, Mpower believes the original zone coding was accurate and that 6-7,000 of its loops are in Zone 2, rather than the 26,000 now billed in Zone 2. The best way to verify would be to correlate the circuits to the central offices where they terminate, as the collocations are readily identifiable as to Zone. **As** noted, however, the PacBell bills – unlike the bills of its sister ILEC, Ameritech -- contain no CLLI codes so the central office location of the loops cannot readily be verified. To date, PacBell has been unwilling or unable to establish the basis for the change of 20,000 loops from Zone 1 to Zone 2.
9. To make matters more difficult and time-consuming, PacBell was required to credit Mpower for reduced loop costs for Zone 1 loops back to the effective date of the order. For the large number of loops that were arbitrarily moved from Zone 1 to Zone 2, PacBell credited those circuits with the reduction in rates back to the date of the order but also added the higher charges for the new coding to Zone 2! Because these credits and cost differentials were lumped together for each circuit, it was extremely difficult to audit what PacBell had done. Mpower estimates that it took 60-80 hours of effort just to determine what PacBell had done and to break out the charges in an identifiable fashion.
10. In addition, PacBell did not follow its usual dispute resolution processes. Most of the time, PacBell assigns a dispute tracking number so credits can be correlated to the disputed items and amounts. All too frequently, however, PacBell is not consistent in providing identifying information for disputed amounts and credits.

In this instance, where almost 100,000 circuits were affected, PacBell put all the credits into the “Other Charges and Credits” section without any dispute number or other adequate identifying information and it was very hard to identify and tie the credits to the disputed items.

11. It should be noted that the problems do not stem from Mpower’s ordering a large number of different products and services. Mpower has 32 billing account numbers (“BAN’s”) with PacBell and by far the most activity is on eight BANs, including those for loop and transport. With more complete and accurate data from PacBell, presented in a format which allows for ready identification of intended charges and their correlation with confirming information, Mpower could process PacBell bills efficiently. It could then use its personnel for improving and fine-tuning processes to make them more efficient rather than struggling to determine what PacBell is charging for what items and attempting to devise methods of verifying the legitimacy and accuracy of the charges.
12. Instead, Mpower must routinely dispute charges that are vague, inaccurate or inappropriate. Typically, these disputes are handled by a dispute resolution center whose personnel is not adequately knowledgeable to recognize billing errors and does *not* communicate sufficiently with PacBell’s billing personnel or Mpower to resolve the issues adequately. Thus, frequently, Mpower disputes an inaccurate charge – such as the Zone changes discussed above – and PacBell either *peremptorily* rejects the dispute or states that they have resolved the problem by some action which, in fact, is not responsive to the issue raised. This results in further inefficiencies for Mpower because it must then refile the dispute. Multiple

refiling of improperly rejected disputes is often necessary on one set of issues. In addition to the additional delay and work required, once PacBell has rejected a dispute, it begins to charge Mpower late charges. Subsequently, if Mpower prevails, it is not automatically credited with the erroneous late charges but it must then dispute the erroneous late charges! If Mpower does not prevail, Mpower may owe a large number of charges in a lump sum which would more appropriately have been distributed across a number of months or a number of quarters. Thus, the errors cumulate and cause increased business impact as they continue to be unresolved for many months.

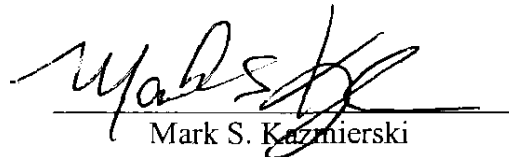
13. The best resolution of these problems would entail the entry of proper data in proper fields with proper descriptions which can be correlated with the descriptions and pricing in the interconnection agreement through USOC or billing codes and CLLI codes. When there are vague, inaccurate or improper entries, it is necessary for the assigned personnel to make a good faith effort to identify, evaluate and resolve the issues. None of these processes currently exist.

AFFIRMATION

STATE OF NEW YORK)
)
COUNTY OF MONROE) ss.

MARK S. KAZMIERSKI, being first duly sworn, deposes and says:

That he is the person identified in the attached Affidavit; and that such Affidavit was prepared by him or under his direction and that the information set forth therein is true to the best of his own knowledge and belief.


Mark S. Kazmierski

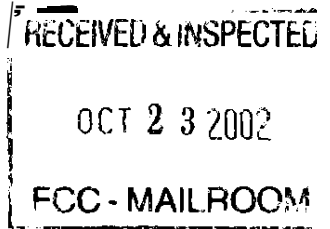
Subscribed and sworn to before me
this 21 day of October, 2002.


Notary Public

Mr Bayley
Notary Public, State of N.Y., Ontario County
Commission Expires July 1, 2006

MPOWER COMMUNICATIONS CORP
Russell I. Zuckerman
Senior Vice President & General Counsel
Richard E. Heatter
Vice President, Legal Affairs
Marilyn H. Ash
Counsel – Legal & Regulatory Affairs
175 Sully's Trail – Suite 300
Pittsford, NY 14534
(585) 218-8678 (tel)
(585) 218-0635 (fax)

**Before the
Federal Communications Commission
Washington, D.C. 20554**



In the Matter of

Application by SBC Communications Inc.,)	
Pacific Bell Telephone Company and)	
Southwestern Bell Communications Services, Inc.)	CC Docket No. 02-306
for Provision of In-Region, InterLATA Services in)	
California)	

**AFFIDAVIT OF SCOTT SAREM
ON BEHALF OF
MPOWER COMMUNICATIONS CORP.
ON PACIFIC BELL APPLICATION
FOR 271 AUTHORITY**

I, Scott Sarem, under oath, hereby state as follows:

1. I am National Vice President of Strategic Relations for Mpower Communications Corp. ("Mpower") and have worked for Mpower since April 1998. My business address is 2 Executive Circle, Suite 270, Irvine, CA 92614.
2. I am responsible for managing the relationship between Mpower and the Incumbent Local Exchange Carriers ("ILECs") across the country, the main suppliers of unbundled network elements to Mpower. My primary responsibility is to work with the ILECs to resolve operational and billing issues in conformance with the mandates of the Telecommunications Act of 1996 and the performance measurements adopted by the state Public Utilities Commissions. Prior to joining Mpower, I was Vice President of Regulatory Affairs for Justice Technology (now US Telepacific Communications) where I was responsible for starting their competitive local

exchange carrier (“CLEC”). I hold a Juris Doctorate from the UCLA School of Law and a BA degree in Political Science from the University of California at Riverside.

3. Anti-competitive Tactics by PacBell. Each of the issues discussed below was escalated to my department for resolution with PacBell. Notwithstanding the PacBell billing system problems, up until the last 4-6 months, PacBell usually has been cooperative in trying to obtain explanations and achieve resolution of disputes. Recently, however, the account management escalation path has been changed. Rather than the wholesale account team attempting to broker a fair solution, PacBell’s billing dispute resolution is now conducted by the SBC finance department directly. As outlined in the Mpower comments, SBC’s billing systems do not track billing disputes and the SBC collections department uses aggressive tactics to attempt to collect disputed invoices. Now, some Mpower disputes seem to “get lost in the system” and I am shuffled from one person to another, each of whom says that he or she is not responsible for the issue. Other times, responsible personnel do not obtain the information necessary to make an informed decision. For example, SBC finance and collection personnel have erroneously included disputed amounts in figures for what Mpower owes SBC. Instead of obtaining the proper information through its own billing personnel or through Mpower, SBC has withheld payment of millions of dollars SBC undeniably owes to Mpower in order to pressure Mpower into paying these disputed amounts. In fact, SBC’s finance personnel have asked Mpower to create a sample invoice to demonstrate what Mpower thought it legitimately owed. SBC requested that Mpower go through this exercise because SBC could not provide an accurate bill on its own. Mpower is entitled to dispute vague, inaccurate or

improper charges but SBC is using its market power to punish Mpower for exercising its legitimate rights to dispute the many inaccuracies in SBC billings. This denies Mpower its rights, denies it needed capital and has a significant anti-competitive impact, which is heightened by the extremely difficult financial conditions currently faced by CLECs.

4. End User Returns. End user return charges result from loops disconnected because of a successful PacBell “win-back” of an Mpower customer. Because the work is done for PacBell and not Mpower, PacBell is not supposed to charge Mpower for these disconnection charges. Mpower discovered, however, that when PacBell faxes a local service order (“LSR”) to Mpower for a win-back, these charges are included on Mpower’s bills. Because they are identified in the same manner as Mpower orders to PacBell for loops disconnected because of non-paying customers, etc., Mpower has no way of identifying these charges and must rely upon PacBell to recognize their error and credit Mpower. If PacBell used more precise USOCs or billing order codes or a PacBell purchase order number (“PON”) rather than merely the circuit ID, Mpower could at least identify these errors when they occur. Because of the inaccuracies of PacBell’s USOCs, however, Mpower has no way to verify these charges and screen out erroneous charges.
5. Erroneous Manual Order Charges. Mpower exclusively uses PacBell’s LEX electronic ordering system, which should result in a charge of \$.16 per order. Instead, Mpower is routinely billed for manual ordering charges, appropriate to faxed orders, which cost \$57.53. Mpower does not fax its orders to PacBell and should not receive

such charges. Nevertheless, Mpower must continue to dispute such charges on a regular basis.

6. Maintenance and Repair/"Trip" Charges. Prior to requesting that SBC check its lines for trouble, Mpower always performs a Hams test. A Hams test is a remote line testing system which affirmatively determines that the trouble is not on Mpower's collocation equipment or switch. Consequently, when Mpower opens a trouble ticket, the trouble should always be on PacBell's lines. When the trouble is on PacBell's lines, Mpower should not be charged. Mpower has queried its customers on numerous occasions about whether PacBell came out and fixed the trouble on the line. Mpower's customers routinely indicate that is how the trouble was resolved. Nevertheless, Mpower is routinely billed as much as \$100,000 per month for these maintenance and repair "trip charges." Because PacBell acknowledges that these charges are not adequately or accurately identified, PacBell and Mpower have agreed to split the charges equally. This is another example, however, of PacBell billing inaccuracies which result in substantial costs to Mpower.
7. Erroneous Disconnect Line Charges. Mpower orders the disconnection of lines from PacBell using its electronic, LEX ordering system. When Mpower orders the disconnection of a circuit, Mpower removes the line information from its switch and its billing database ("CMS"). When Mpower compares its switch and CMS records to PacBell's loop bills, it continually finds hundreds of lines being charged to Mpower for which it no longer has line records in its switch or CMS. Typically it takes at least 2-3 months for PacBell to cease billing Mpower for disconnected lines

that Mpower is no longer leasing from PacBell. Thus, Mpower must continue to identify and dispute these lines for months before PacBell ceases to bill for the lines.

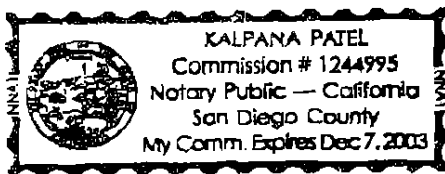
8. Thus, because of imprecise billing codes, inaccurate data and erroneous charges, Mpower must spend **an** inordinate amount of time identifying and disputing PacBell charges, which amount to millions of dollars. Further, the dispute resolution process no longer works at PacBell. The account team assigned *to* Mpower no longer has authority to work many of these disputes and no specific individuals or groups have been assigned to take their place. Consequently, disputes are not getting resolved in a timely and effective manner. SBC continues to withhold millions of dollars **it** admittedly owes Mpower and refuses to recognize the existence of millions of dollars in legitimately disputed amounts which Mpower has diligently been **trying** to get resolved. The impact of these defective processes is severely anti-competitive.

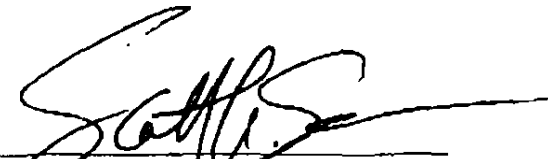
AFFIRMATION

STATE OF CALIFORNIA)
)
COUNTY OF SAN DIEGO) ss

SCOTT SAREM, being first duly **sworn**, deposes and **says**:

That he ~~is~~ the **person** identified in the attached Affidavit; and that such Affidavit was **prepared** by him or under his direction and that the information set forth ~~therein~~ **is** true to the best of his own knowledge and belief.





Scott Sarem

Subscribed and sworn to before me
this 21st day of October, 2002

Kalpana Patel

Notary Public

MPOWER COMMUNICATIONS CORP.
Russell I. Zuckerman
Senior **Vice President &** General Counsel
Richard E. Heatter
Vice President, Legal Affairs
Marilyn H. Ash
Counsel -**Legal & Regulatory Affairs**
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